#### IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA Charlotte Division

In re:		
		Case Number: 18-30241
BK Racing, LLC,		
		Chapter 11
	Debtor.	

# NOTICE OF INTENT TO SERVE SUBPOENAS ON BANK OF AMERICA, FIRST VIRGINIA COMMUNITY BANK, BURKE AND HERBERT BANK, UNION FIRST BANK (UNION BANK AND TRUST) AND SUNTRUST BANK COMMANDING PRODUCTION OF DOCUMENTS

NOTICE IS HEREBY GIVEN that Matthew W. Smith, Court-appointed Chapter 11 Trustee of BK Racing, LLC ("Trustee"), through counsel, and, pursuant to Rule 45(a)(4) of the Federal Rules of Civil Procedure, made applicable herein by Rule 9016 of the Federal Rules of Bankruptcy Procedure, hereby notifies all parties in the above-captioned action that the Trustee intends to serve the attached Subpoenas Duces Tecum within five (5) days from the date of service of this notice.

This, the 29th day of November, 2018.

/s/ Anna S. Gorman

Anna S. Gorman (N.C. State Bar No. 20987)
Grier Furr & Crisp PA
101 North Tryon Street, Suite 1240
Charlotte, North Carolina 28246
Telephone: 704/375.3720; Fax: 704/332.0215
agorman@grierlaw.com

Attorneys for Trustee

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B2570 (Form 2570 - Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (12/15) UNITED STATES BANKRUPTCY COURT Western District of North Carolina BK Racing, LLC Debtor Case No. 18-30241 (Complete if issued in an adversary proceeding) Chapter 11 Plaintiff ٧. Adv. Proc. No. Defendant SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING) Bank of America (Name of person to whom the subpoena is directed) Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A, attached hereto and incorporated herein by reference PLACE Grier Furr & Crisp, PA DATE AND TIME 101 N. Tryon Street, Suite 1240 Charlotte, NC 28246 12:00 p.m. (Noon) (EST) December 21, 2018 Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it. **PLACE** DATE AND TIME The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so. Date: November 29, 2018 CLERK OF COURT OR Signature of Clerk or Deputy Clerk Attorney's signature The name, address, email address, and telephone number of the attorney representing (name of party)

Matthew W. Smith, Ch. 11 Trustee, who issues or requests this subpoena, are:

Anna Gorman, Grier Furr & Crisp, PA, 101 N. Tryon St., Ste. 1240, Charlotte, NC 28246; agorman@grierlaw.com, 704/332.0208

#### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

## EXHIBIT A TO THE SUBPOENA TO BANK OF AMERICA DOCUMENTS TO PRODUCE

Regarding BK Racing, LLC, Bank of America Bank Accounts Operating Account #201212 and Payroll Account #201212 — For the period of February 15, 2014 through February 15, 2018, copies of all monthly account statements, copies of checks and debits, detailed description of any miscellaneous debits and credits, copies cashiers or certified checks, detailed information on all incoming and outgoing wire transfers including date, amount, recipient, or originator, any additional information reflecting all funds deposited into or withdrawn from the account(s).

Regarding additional <u>Bank of America Bank Accounts in the name of BK Racing, LLC including but not limited to accounts ending in 1157, 1160, 1131 and 1998</u> - For the period of February 15, 2014 through February 15, 2018, copies of all monthly account statements, copies of checks and debits, detailed description of any miscellaneous debits and credits, copies cashiers or certified checks, detailed information on all incoming and outgoing wire transfers including date, amount, recipient, or originator, any additional information reflecting all funds deposited into or withdrawn from the account(s).

Regarding each of the above-referenced accounts a csv/excel/data file with the following information: date, amount, payee, type (check, wire, ach, etc), account balance, debit/credit.

Production may be electronic in lieu of physical production by e-mailing to:

Mmartinez@grierlaw.com

#### (c) Place of compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.
- (2) For Other Discovery. A subpoena may command:
- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
  - (B) inspection of premises, at the premises to be inspected.

#### (d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

#### (2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- (B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

#### (3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
  - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
  - (iv) subjects a person to undue burden.
- (B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

#### (e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- (A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- (B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- (C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- (D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
  - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- (B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved: must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.
- (g) Contempt. The court for the district where compliance is required and also, after a motion is transferred, the issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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B2570 (Form 2570 - Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (Page 2)

#### PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

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I received this subpoena for (name of individual and title, if any):	
on (date)	
I served the subpoena by delivering a copy to the named personal lates and the subpoena by delivering a copy to the named personal lates are subpoenal by delivering a copy to the named personal lates are subpoenal by delivering a copy to the named personal lates are subpoenal by delivering a copy to the named personal lates are subpoenal lates	on as follows:
on (date)	; or
I returned the subnoana unavecuted because	
I returned the subpoena unexecuted because:	
Unless the subpoena was issued on behalf of the United States, or	one of its officers or agents. I have also tendered to the
witness the fees for one day's attendance, and the mileage allowe	d by law, in the amount of \$
My fees are \$ for travel and \$ for services	s, for a total of \$
I declare under penalty of perjury that this information is	true and correct.
Date:	
<del></del>	Server's signature
<del>-</del>	Printed name and title
· -	Server's address

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B2570 (Form 2570 – Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (12/15)

Western	District of	North Carolina
Debtor  (Complete if issued in an adversary proceeding)		18-30241
Plaintiff V.  Defendant	_	. No
SUBPOENA TO PRODUCE DOCUM INSPECTION OF PREMISES IN A B.		· · · · · · · · · · · · · · · · · · ·
	f person to whom the sub	poena is directed)
X Production: YOU ARE COMMANDED to p		•
material: See Exhibit A, attached hereto and in PLACE Grier Furr & Crisp, PA 101 N. Tryon Street, Suite 1240 Charlot	te, NC 28246	DATE AND TIME 12:00 p.m. (Noon) (EST) December 21, 2018
PLACE Grier Furr & Crisp, PA 101 N. Tryon Street, Suite 1240 Charlot  Inspection of Premises: YOU ARE COMMA other property possessed or controlled by you at the may inspect, measure, survey, photograph, test, or s	te, NC 28246  NDED to permit entry time, date, and location	DATE AND TIME  12:00 p.m. (Noon) (EST) December 21, 2018  onto the designated premises, land, or n set forth below, so that the requesting party
	te, NC 28246  NDED to permit entry time, date, and location	DATE AND TIME  12:00 p.m. (Noon) (EST) December 21, 2018  onto the designated premises, land, or n set forth below, so that the requesting party any designated object or operation on it.
PLACE Grier Furr & Crisp, PA  101 N. Tryon Street, Suite 1240 Charlot  Inspection of Premises: YOU ARE COMMA: other property possessed or controlled by you at the may inspect, measure, survey, photograph, test, or sept. PLACE  The following provisions of Fed. R. Civ. P. attached – Rule 45(c), relating to the place of comp subpoena; and Rule 45(e) and 45(g), relating to you doing so.	te, NC 28246  NDED to permit entry time, date, and location ample the property or a 45, made applicable in liance; Rule 45(d), rela	DATE AND TIME  12:00 p.m. (Noon) (EST) December 21, 2018  onto the designated premises, land, or n set forth below, so that the requesting party any designated object or operation on it.  DATE AND TIME  a bankruptcy cases by Fed. R. Bankr. P. 9016, are ting to your protection as a person subject to a
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Notice to the person who issues or requests this subpoena

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## EXHIBIT A TO THE SUBPOENA TO FIRST VIRGINIA COMMUNITY BANK DOCUMENTS TO PRODUCE

Regarding BK Racing, LLC, First Virginia Community Bank Accounts Operating Account #200695 and Payroll Account #200705 — For the period of February 15, 2014 through February 15, 2018 (or through closure if earlier), copies of all monthly account statements, copies of checks and debits, detailed description of any miscellaneous debits and credits, copies cashiers or certified checks, detailed information on all incoming and outgoing wire transfers including date, amount, recipient, or originator, any additional information reflecting all funds deposited into or withdrawn from the account(s).

Regarding each of the above-referenced accounts a csv/excel/data file with the following information: date, amount, payee, type (check, wire, ach, etc), account balance, debit/credit.

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B2570 (Form 2570 - Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (Page 2)

#### PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and title, if any) on (date)	):
I served the subpoena by delivering a copy to the named pers	son as follows:
on (date)	; or
☐ I returned the subpoena unexecuted because:	
Unless the subpoena was issued on behalf of the United States, of witness the fees for one day's attendance, and the mileage allowed.  My fees are \$ for travel and \$ for service.	ed by law, in the amount of \$ es, for a total of \$
I declare under penalty of perjury that this information is	s true and correct.
Date:	
	Server's signature
-	Printed name and title
•	Server's address

#### (c) Place of compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
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- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
  - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
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- (B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
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- (D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

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  - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- (B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.
- (g) Contempt. The court for the district where compliance is required and also, after a motion is transferred, the issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it

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B2570 (Form 2570 - Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (12/15)

	TATES BANKRUPT	
Western	District of	North Carolina
re <u>BK Racing, LLC</u> Debtor	<del>Name Control of the </del>	
Bettor	Case No.	18-30241
(Complete if issued in an adversary proceed)	ing)	
	Chapter 1	
Plaintiff	<del></del>	
٧.	Adv. Proc. No	0
Defendant		
SUBPOENA TO PRODUCE DOCI INSPECTION OF PREMISES IN A To: Burke & Herbert Bank	A BANKRUPTCY CASE (	OR ADVERSARY PROCEEDING)
(Nat	me of person to whom the subpoer	na is directed)
		aforem an
material: See Exhibit A, attached hereto an		
material: See Exhibit A, attached hereto an	d incorporated herein by re	DATE AND TIME
PLACE Grier Furr & Crisp, PA 101 N. Tryon Street, Suite 1240 Cha  Inspection of Premises: YOU ARE COMpother property possessed or controlled by you a may inspect, measure, survey, photograph, test,	d incorporated herein by re urlotte, NC 28246  MANDED to permit entry onto ut the time, date, and location se	DATE AND TIME  12:00 p.m. (Noon) (EST) December 21, 201  to the designated premises, land, or et forth below, so that the requesting party
documents, electronically stored information, o material: See Exhibit A, attached hereto an PLACE Grier Furr & Crisp, PA  101 N. Tryon Street, Suite 1240 Cha  Inspection of Premises: YOU ARE COM other property possessed or controlled by you a may inspect, measure, survey, photograph, test, PLACE	d incorporated herein by re urlotte, NC 28246  MANDED to permit entry onto ut the time, date, and location se	DATE AND TIME  12:00 p.m. (Noon) (EST) December 21, 201  o the designated premises, land, or et forth below, so that the requesting party designated object or operation on it.
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material: See Exhibit A, attached hereto an PLACE Grier Furr & Crisp, PA 101 N. Tryon Street, Suite 1240 Cha  Inspection of Premises: YOU ARE COM other property possessed or controlled by you a may inspect, measure, survey, photograph, test, PLACE	d incorporated herein by real carlotte, NC 28246  MANDED to permit entry onto the time, date, and location set, or sample the property or any ov. P. 45, made applicable in barompliance; Rule 45(d), relating	DATE AND TIME  12:00 p.m. (Noon) (EST) December 21, 201  of the designated premises, land, or extract forth below, so that the requesting party designated object or operation on it.  DATE AND TIME  Inkruptcy cases by Fed. R. Bankr. P. 9016, are to your protection as a person subject to a
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#### Notice to the person who issues or requests this subpoena

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## EXHIBIT A TO THE SUBPOENA TO BURKE AND HERBERT BANK DOCUMENTS TO PRODUCE

Regarding BK Racing, LLC, Burke and Herbert Bank Accounts Operating Account #5539, Payroll Account #5529, Operating Account #55547, and Payroll Account #55512 — For the period of February 15, 2014 (or inception whichever is earlier) through February 15, 2018 (or through closure if earlier), copies of all monthly account statements, copies of checks and debits, detailed description of any miscellaneous debits and credits, copies cashiers or certified checks, detailed information on all incoming and outgoing wire transfers including date, amount, recipient, or originator, any additional information reflecting all funds deposited into or withdrawn from the account(s).

Regarding each of the above-referenced accounts a csv/excel/data file with the following information: date, amount, payee, type (check, wire, ach, etc), account balance, debit/credit.

Production may be electronic in lieu of physical production by e-mailing to:

mmartinez@grierlaw.com

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#### PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

( I his section should not be filed with	the court aniess required by rea. R. Civ. 1. 43.
I received this subpoena for (name of individual and title	, if any):
on (date)	
I served the subpoena by delivering a copy to the name	ned person as follows:
on (date)	; or
☐ I returned the submoone unevented because	
Unless the subpoena was issued on behalf of the United S	States, or one of its officers or agents, I have also tendered to the
	e allowed by law, in the amount of \$
My fees are \$ for travel and \$ for	r sarvices, for a total of \$
for traver and \$ for	is services, for a total of \$
I declare under penalty of perjury that this inform	nation is true and correct.
Date:	
	Server's signature
	Printed name and title
	***************************************
	Server's address

#### (c) Place of compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.
- (2) For Other Discovery. A subpoena may command:
- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
  - (B) inspection of premises, at the premises to be inspected.

#### (d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

#### (2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- (B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.
- (3) Quashing or Modifying a Subpoena.
- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
  - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
  - (iv) subjects a person to undue burden.
- (B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

#### (e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- (A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- (B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- (C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- (D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
  - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- (B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.
- (g) Contempt. The court for the district where compliance is required and also, after a motion is transferred, the issuing court – may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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B2570 (Form 2570 - Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (12/15)

OTHER STITE	ES BANKRUI	TCT COURT
Western	District of	North Carolina
re BK Racing, LLC		
Debtor	Casa No	18-30241
(Complete if issued in an adversary proceeding)	Case IVO.	10 00011
	Chapter	11
Plaintiff		
<b>v.</b>	Adv. Proc.	No
Defendant		
SUBPOENA TO PRODUCE DOCUMEN INSPECTION OF PREMISES IN A BAN	=	
To: Union First Bank (Union Bank and Trust)		
(Name of pe	erson to whom the subp	pena is directed)
Production: YOU ARE COMMANDED to prod		•
ocuments, electronically stored information, or object		
naterial: See Exhibit A, attached hereto and inco	rporated herein by	reference
LACE Grier Furr & Crisp, PA		DATE AND TIME
101 N. Tryon Street, Suite 1240 Charlotte,	NIC 28246	12.00 (NI ) (ECT) D 1 01 001
	110 20240	12:00 p.m. (Noon) (EST) December 21, 2018
other property possessed or controlled by you at the tir	ED to permit entry one, date, and location	nto the designated premises, land, or set forth below, so that the requesting party
other property possessed or controlled by you at the tirnay inspect, measure, survey, photograph, test, or same	ED to permit entry one, date, and location	nto the designated premises, land, or set forth below, so that the requesting party
other property possessed or controlled by you at the times inspect, measure, survey, photograph, test, or same	ED to permit entry one, date, and location	nto the designated premises, land, or set forth below, so that the requesting party ny designated object or operation on it.
The following provisions of Fed. R. Civ. P. 45 attached – Rule 45(e) and 45(g), relating to your dloing so.  Date: November 29, 2018  CLERK OF COURT	PED to permit entry one, date, and location aple the property or an applicable in ace; Rule 45(d), relations	nto the designated premises, land, or set forth below, so that the requesting party by designated object or operation on it.  DATE AND TIME  bankruptcy cases by Fed. R. Bankr. P. 9016, are ng to your protection as a person subject to a
The following provisions of Fed. R. Civ. P. 45 attached – Rule 45(e), relating to the place of compliar subpoena; and Rule 45(e) and 45(g), relating to your deloing so.  Date: November 29, 2018	PED to permit entry one, date, and location uple the property or an analysis and applicable in the property of	nto the designated premises, land, or set forth below, so that the requesting party by designated object or operation on it.  DATE AND TIME  bankruptcy cases by Fed. R. Bankr. P. 9016, are ng to your protection as a person subject to a

Anna Gorman, Grier Furr & Crisp, PA, 101 N. Tryon St., Ste. 1240, Charlotte, NC 28246; agorman@grierlaw.com, 704/332.0208

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

## EXHIBIT A TO THE SUBPOENA TO UNION FIRST BANK (UNION BANK & TRUST) DOCUMENTS TO PRODUCE

Regarding BK Racing, LLC, Union First Bank (Union Bank & Trust) Operating Account # 9467, Payroll Account # 9948, and Flex Account # 94847 — For the period of February 15, 2014 through February 15, 2018 (or through closure if earlier), copies of all monthly account statements, copies of checks and debits, detailed description of any miscellaneous debits and credits, copies cashiers or certified checks, detailed information on all incoming and outgoing wire transfers including date, amount, recipient, or originator, any additional information reflecting all funds deposited into or withdrawn from the account(s).

Regarding each of the above-referenced accounts a csv/excel/data file with the following information: date, amount, payee, type (check, wire, ach, etc), account balance, debit/credit.

Production may be electronic in lieu of physical production by e-mailing to:

mmartinez@grierlaw.com

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B2570 (Form 2570 - Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (Page 2)

#### PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

(xms section should not be then with the court	inicss required by red. R. Civ. 1. 45.
I received this subpoena for (name of individual and title, if any):	
on (date)	
I served the subpoena by delivering a copy to the named person a	us follows:
on (date)	; or
☐ I returned the subpoena unexecuted because:	
Unless the subpoena was issued on behalf of the United States, or on witness the fees for one day's attendance, and the mileage allowed by My fees are \$ for travel and \$ for services, for I declare under penalty of perjury that this information is true.	y law, in the amount of \$ or a total of \$
Date:	
	Server's signature
	Printed name and title
	Server's address

#### (c) Place of compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.
- (2) For Other Discovery. A subpoena may command:
- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
  - (B) inspection of premises, at the premises to be inspected.

#### (d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

#### (2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- (B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

#### (3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
  - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
  - (iv) subjects a person to undue burden.
- (B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

#### (e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- (A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- (B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- (C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- (D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
  - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- (B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.
- (g) Contempt. The court for the district where compliance is required and also, after a motion is transferred, the issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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B2570 (Form 2570 - Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (12/15)

United Stat	ES BANKRU	PTCY COURT
Western	District of	North Carolina
re BK Racing, LLC		
Debtor	Case No.	18-30241
(Complete if issued in an adversary proceeding)	Cuso No.	
	Chapter _	
Plaintiff		
v.	Adv. Proc	. No
Defendant		
SUBPOENA TO PRODUCE DOCUME INSPECTION OF PREMISES IN A BA  o: Suntrust Bank	· · · · · · · · · · · · · · · · · · ·	The state of the s
	person to whom the subj	poena is directed)
	cts, and to permit insi	pection, copying, testing, or sampling of the
naterial: See Exhibit A, attached hereto and inc	•	y reference
LACE Grier Furr & Crisp, PA 101 N. Tryon Street, Suite 1240 Charlotte	orporated herein b	DATE AND TIME 12:00 p.m. (Noon) (EST) December 21, 2018
LACE Grier Furr & Crisp, PA 101 N. Tryon Street, Suite 1240 Charlotte  Inspection of Premises: YOU ARE COMMAN ther property possessed or controlled by you at the to hay inspect, measure, survey, photograph, test, or sa	e, NC 28246  DED to permit entry ime, date, and location	DATE AND TIME  12:00 p.m. (Noon) (EST) December 21, 2018  onto the designated premises, land, or n set forth below, so that the requesting party any designated object or operation on it.
PLACE Grier Furr & Crisp, PA 101 N. Tryon Street, Suite 1240 Charlotte  Inspection of Premises: YOU ARE COMMAN other property possessed or controlled by you at the to may inspect, measure, survey, photograph, test, or sa	e, NC 28246  DED to permit entry ime, date, and location	DATE AND TIME 12:00 p.m. (Noon) (EST) December 21, 2018 onto the designated premises, land, or n set forth below, so that the requesting party
The following provisions of Fed. R. Civ. P. 4  ttached – Rule 45(c), relating to the place of complicutions; and Rule 45(e) and 45(g), relating to your	e, NC 28246  DED to permit entry ime, date, and location imple the property or a same and inception of the property of the pro	DATE AND TIME  12:00 p.m. (Noon) (EST) December 21, 2018  onto the designated premises, land, or in set forth below, so that the requesting party any designated object or operation on it.  DATE AND TIME  bankruptcy cases by Fed. R. Bankr. P. 9016, are ting to your protection as a person subject to a
LACE Grier Furr & Crisp, PA  101 N. Tryon Street, Suite 1240 Charlotte  Inspection of Premises: YOU ARE COMMAN ther property possessed or controlled by you at the to any inspect, measure, survey, photograph, test, or sa LACE  The following provisions of Fed. R. Civ. P. 4 ttached – Rule 45(c), relating to the place of complications and Rule 45(e) and 45(g), relating to your oing so.	e, NC 28246  DED to permit entry ime, date, and location imple the property or a same and inception of the property of the pro	DATE AND TIME  12:00 p.m. (Noon) (EST) December 21, 2018  onto the designated premises, land, or in set forth below, so that the requesting party any designated object or operation on it.  DATE AND TIME  bankruptcy cases by Fed. R. Bankr. P. 9016, are ting to your protection as a person subject to a
Inspection of Premises: YOU ARE COMMAN other property possessed or controlled by you at the to may inspect, measure, survey, photograph, test, or sa PLACE	e, NC 28246  DED to permit entry ime, date, and location imple the property or a pance; Rule 45(d), reladity to respond to this	DATE AND TIME  12:00 p.m. (Noon) (EST) December 21, 2018  onto the designated premises, land, or in set forth below, so that the requesting party any designated object or operation on it.  DATE AND TIME  bankruptcy cases by Fed. R. Bankr. P. 9016, are ting to your protection as a person subject to a

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

## EXHIBIT A TO THE SUBPOENA TO SUNTRUST BANK DOCUMENTS TO PRODUCE

Regarding <u>BK Racing</u>, <u>LLC</u>, <u>Suntrust Bank</u> <u>Account #67213</u> — For the period of February 15, 2014 through February 15, 2018, copies of all monthly account statements, copies of checks and debits, detailed description of any miscellaneous debits and credits, copies cashiers or certified checks, detailed information on all incoming and outgoing wire transfers including date, amount, recipient, or originator, any additional information reflecting all funds deposited into or withdrawn from the account(s).

Regarding each of the above-referenced accounts a csv/excel/data file with the following information: date, amount, payee, type (check, wire, ach, etc), account balance, debit/credit.

Production may be electronic in lieu of physical production by e-mailing to:

mmartinez@grierlaw.com

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B2570 (Form 2570 - Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (Page 2)

#### PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

•	1
I received this subpoena for (name of individual and title	e, if any):
on <i>(date)</i>	
I served the subpoena by delivering a copy to the nam	ned person as follows:
on ( <i>date</i> )	; or
Traturned the subnoana unavecuted because	
	States, or one of its officers or agents, I have also tendered to the e allowed by law, in the amount of \$
My fees are \$ for travel and \$ for	r services, for a total of \$
I declare under penalty of perjury that this inform	nation is true and correct.
Date:	
	Server's signature
	Printed name and title
	Server's address

#### (c) Place of compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.
- (2) For Other Discovery. A subpoena may command:
- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
  - (B) inspection of premises, at the premises to be inspected.

#### (d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

#### (2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- (B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

#### (3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
  - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
  - (iv) subjects a person to undue burden.
- (B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

#### (e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- (A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- (B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- (C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- (D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
  - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- (B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.
- (g) Contempt. The court for the district where compliance is required and also, after a motion is transferred, the issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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#### IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA Charlotte Division

In re:		
		Case Number: 18-30241
BK Racing, LLC,		
		Chapter 11
	Debtor.	

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of the foregoing *Notice of Intent to Serve Subpoenas on Bank of America, First Virginia Community Bank, Burke and Herbert Bank, Union First Bank (Union Bank & Trust) and SunTrust Bank Commanding Production of Documents* on all parties requesting notice in this case through the Court's electronic noticing system.

This, the 29th day of November, 2018.

/s/ Anna S. Gorman

Anna S. Gorman Grier Furr & Crisp, PA 101 North Tryon Street, Suite 1240 Charlotte, North Carolina 28246